IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED

AND

UNIVERSAL CARGO CARRIERS, INC.
Petitioners;

VS.

ZACHARIAS RHODITIS,
Respondent.

PETITION FOR REHEARING

GEORGE F. WOOD
Attorney for Petitioners

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Come petitioners, Hellenic Lines Limited and Universal Cargo Carriers, and petition this Honorable Court for a rehearing on its decision entered on the 8th day of June, 1970, which decision extended the application of the Jones Act to a foreign seaman on a foreign flag vessel while in the employ of a foreign shipowner, on the basis of the domicile in the United States of the alien owner of the majority stock of the shipowner corporation. The following grounds for the petition are respectfully set forth:

I

The law of the flag outweighs the domicile of the majority stockholder in the determination of applicable law to internal affairs of a vessel.

II

The decision misconceives the purpose for which the Jones Act was enacted, that of protecting the rights of seamen. Instead, the Court uses the statute to penalize foreign shipowners whose majority stockholder resides in the United States and in the pursuit of the goal of economic equalization between American and foreign shipowners.

III

By this decision, the Court usurps the prerogative of the Congress by extending the reach of a statute of the United States to control relations between nationals of an alien flag, contrary to the intent of the Congress as established by long-standing authority.

Appended to this petition, as Appendix A, is an argument in support of the foregoing grounds. In addition, a brief on behalf of the Royal Greek Government is appended to this petition, as Appendix B and a brief on behalf of the Union of Greek Shipowners and the Chamber of Shipping of Greece is appended to this petition as Exhibit C.

Respectfully submitted,

GEORGE F. WOOD
Attorney for Hellenic Lines Limited
and Universal Cargo Carriers, Inc.

The undersigned counsel for the petitioners confirms that the foregoing petition is presented in good faith and is not for the purpose of delay.

.....

APPENDIX A

ARGUMENT

I

Since no later than 1923, when the case of *Cunard Steamship Co.* v. *Mellon,* 262 U. S. 100, was decided, the law of the flag has been accorded paramount importance in the determination of the national law applicable to the internal relationships of owners and seamen. The overriding importance of the law of the flag continued through the *United States* v. *Flores,* 289 U. S. 137, and culminated in the controlling decision of *Lauritzen* v. *Larsen,* 345 U. S. 571. It was later re-affirmed in the cases of *McCulloch* v. *Sociedad National,* 372 U. S. 10, *Incres S. S. Co.* v. *International Maritime Workers Union,* 372 U. S. 24, *Benz* v. *Compania Naviera Hildago,* 352 U. S. 138, and, most recently, *International Longshoremen's Local 1416, etc.* v. *Adriadne Shipping Co. Ltd. et als,* 397 U. S. 195, 262.

The basis for its importance, quite aside from the dignity to be accorded to sister nations, their maritime enterprises and their right to the control thereof, is made clear in *Romero* v. *International Terminal Operating Co., et al,* 358 U. S. 354, 382, where the Court pointed out the unique value of the application of a single law to the internal affairs of a vessel:

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous one but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country."

Particularly must it be borne in mind that we are not here dealing with the ordinary "flag of convenience" vessel or shipowner. Hellenic Lines Limited was formed in Greece

in 1934 and at the time that its majority stockholder established a domicile in the United States as a resident alien, it was a going concern important in the maritime affairs of Greece. This is without dispute.

Under the decision in this cause, the venerable law of the supremacy of the "law of the flag" was swept aside by and made subordinate to the residence of an alien in the United States. Such residence, subject to change at will, is insignificant when compared to the more constant law of the flag. Not only is it transitory but the decision could lead to unfortunate consequences. Under the reasoning of the Court, a Greek seaman signing on an Hellenic Lines ship in Piraeus, Greece, and injured in that port on the date of sign-on, without ever going to sea or even visiting the United States, would have resort to the United States Courts with all the benefits of American law available to him. Not only would this be in contravention of his contract of employment but would call for a result not even remotely foreseen by the seaman in undertaking the employment. Of greater moment, it would constitute an intrusion of American law into relationships between foreign nationals in violation of the sovereign right of the nation of the flag to control its own affairs.

II

That the Court departed from the long established purpose of the Congress in the enactment of the Jones Act is inescapable from a mere reading of the opinion:

> "We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act 'employer'". (Preliminary Print of Opinion, p. 4).

Were the purpose of the Jones Act to equalize economic protection and opportunities between American and foreign shipowners who have substantial contacts with the United States, the internal affairs of all foreign shipowners whose vessels call at American ports would thereby be controlled by American law. It cannot be thought that this was the intent of the Congress in enacting a law for the protection of seamen. The protective, perhaps even benevolent, purpose of this Act has been established from the beginning.

> "The legislation (Jones Act) was remedial, *for the benefit and protection of seamen* who are peculiarly the wards of Admiralty . . . Its provisions . . . are to be interpreted in harmony with the established doctrine of maritime law of which it is an integral part". *The Arizona* v. *Analich,* 298 U. S. 110, 123 (emphasis supplied).

In *Lauritzen* it was made clear that in keeping with this "harmony with the established doctrine of maritime law," the Jones Act was enacted within a framework of construction that gave weight to concepts of long standing. Among these concepts are the overriding weight of the flag and respect for the legitimate concern of other nations.

With respect, this basic purpose of the Jones Act should not be altered so as to convert the Act into a tool for the equalization of competition. The same justification would exist for establishing an import quota by judicial decree for the protection of American manufacturers. The control of competition has always been a matter within the purview of the Congress and as such is a matter for legislative rather than judicial action.

Since the instant decision has narrow application, in that it affects only those foreign corporate shipowners whose majority stockholder resides in the United States and maintains a "base of operations" here, the application of the

Jones Act could be simply defeated by the removal of the stockholder's residence from the United States. Such an escape hatch is not available to American citizens. Thus the competition based upon residence is not between American and foreign shipowners but, is in reality, between foreign shipowners whose majority stockholder resides in the United States and whose base of operations is here, on the one hand, and those who reside outside the United States, on the other. No such basis as promulgated by the Court exists for penalizing the alien who resides in the United States in his competition with non-resident aliens. Instead, the resident alien spends his income here, employs American citizens, bears a share of American taxes, and is an economic asset as compared to the non-resident alien. If the purpose of the Act were economic equalization it should be visited upon all foreign shipowners, not upon the resident alien alone, to his economic disadvantage with the non-resident alien.

The traditional purpose of the Jones Act is to benefit seamen. With respect, this Honorable Court should not depart from this purpose by an attempt to translate the statute into a vehicle for the equalization of competitive advantage.

III

As recently as March 9, 1970, this Honorable Court in *International Longshoremen's Local 1416, etc.* v. *Adriadne Shipping Co. Ltd. et als,* 397 U. S. 195, 25 L. Ed 2d 218 (No. 231 decided March 9, 1970) re-examined the Congressional intent to apply a statute primarily concerned with strife between American employers and employees to disputes between foreign ships and their foreign crews. The Court therein re-affirmed the cases of *McCulloch* v. *Sociedad National,* 372 U. S. 10, *Incres S. S. Co.* v. *International Maritime Workers Union,* 372 U. S. 24 and *Benz* v. *Compania Naviera Hildago,* 352 U. S. 138.

At page 262 of the *International Longshoremen's* case, the Court properly left to the Congress its prerogative to

determine the extent of the reach of the National Labor Relations Act:

> "In these cases, we concluded that, since the act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews. Thus, we could not find such an intention by implication, particularly since to do so would thrust the National Labor Relations Board into 'a delicate field of international relations'. Assertion of jurisdiction by the Board over labor relations already governed by foreign law might provoke 'vigorous protest from foreign governments and . . . international problems for our government' . . . and 'invite retaliatory action from other nations'. Moreover, to construe the Act to embrace disputes involving the 'internal discipline and order' of a foreign ship would be to impute to Congress the highly unlikely intention of departing from the 'well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship,' a principle frequently recognized in treaties with other countries."

The Congress, in the Jones Act, as in the National Labor Relations Act, asserted no intent that it should have application to relations between foreign seamen on a foreign flag vessel owned by a foreign shipowner. With respect, the decision does so extend the reach of the Act in usurpation of the power of the Congress.

Respectfully submitted,

GEORGE F. WOOD

Attorney for Petitioners

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS' PETITION FOR REHEARING

JAMES M. ESTABROOK,
Counsel for the Royal Greek Government as Amicus Curiae

DAVID P. H. WATSON,
Of Counsel

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STATEMENT

Petitioner, Hellenic Lines Ltd. has petitioned this Court for a rehearing herein on the grounds that the Summary Calendar time limitation did not permit full argument on the points that under Greek law the Greek flag cannot, considering the obligations involved, be considered a flag of convenience and further that the decision of this Court does not comply with rules of international law already pronounced by this Court emphasizing the importance of the flag of merchant vessels.

ARGUMENT

POINT I

THE GREEK FLAG IS NOT A FLAG OF CONVENIENCE.

While the Greek Law has not been applied to American firms as to business done abroad, now the American law has been applied to business done in what must be considered Greece, i.e., a Greek flag ship, the flag being bona fide and not a flag of convenience. This extension of national policy creates very serious international problems, especially considering respondent was treated in Greece and paid compensation under Greek law. Are American employers of American firms receiving full compensation and treatment under their State acts to be entitled to Greek relief on the grounds that they are primarily engaged in Greek business? Such is the effect of this decision, the Greek flag being bona fide.

While American firms may be satisfied to rely on Greek Courts, and counsel has arranged for American clients to be represented in Greece with satisfactory results, even though against Greek interests, similar treatment cannot in all candor be expected throughout the world.

Within the time limitations of the Summary Calendar full argument could not be presented to show that the Greek merchant marine is not only an important source of foreign exchange, but also an important sector of the national economy, employing in 1969 over 100,000 Greeks and bringing to Greece $250,000,000 dollars per year of which $5,200,000 was brought into Greece by Hellenic Lines. In fact, Greek flag ships are such an important segment of the Greek economy that the Government must protect Greek seamen by ensuring adequate provisions for medical care, compensation, and pensions in Greece under Greek law.

Such provisions involving liability without regard to fault are in accordance with the United States practice of furnishing free medical care to merchant seamen from U. S. flag vessels by the U. S. Public Health Service. The reimbursement for economic loss is, however, very different. A Greek seaman is assured of payment for injury and need not prove negligence.

The Court did not in any way deal with this point in the majority opinion, thus ignoring the practical effect of its decision.

In the present competitive market Hellenic must either move its principal office out of the United States, thus depriving the United States Treasury of taxes from its American based employees and United States citizens of employment, or cease operating, thus depriving Greek citizens of employment and dealing a severe blow to the Greek National economy.

The Royal Greek Government of course does not wish to lose the Hellenic Lines vessels, nor does it wish to deprive a NATO ally of Hellenic Lines tax revenue and emergency vessel commitment. Yet under this decision one of these results is inevitable.

POINT II

THE GREEK FLAG OF THE HELLENIC HERO IS ENTITLED TO MORE WEIGHT THAN THE DOMICILE OF THE PRINCIPAL STOCKHOLDER.

In earlier cases this Court had applied the law of the flag to determine the rights of a Danish seaman injured in Havana on a Danish ship trading between the United States and South America, *Lauritzen* v. *Larsen,* 345 U. S. 571 and to determine the rights of Honduran seamen on

Honduran ships trading between the United States and Central America and beneficially owned by United States citizen, *McCulloch* v. *Sociedad Nacional,* 372 U. S. 10.

In both cases there was similar proof of a bona fide flag with the injured seaman having a remedy at home.

Where the shipowner was managed by a part-time resident Italian national the result was the same, *Incres S. S.* v. *International Maritime Workers Union,* 372 U. S. 24. These followed the earlier decision of the Court in *Bens* v. *Compania Nav. Hidalgo, S. A.,* 353, U. S. 138.

As late as March of this year this doctrine was approved in *ILA Local No. 1416* vs. *Ariadne Shipping Co.,* 397 U. S. 195, when this Court, in holding Liberian and Panamanian Corporations operating cruise vessels out of Florida, subject to American law insofar as their employment of American longshoremen was concerned, carefully distinguished the law applicable to internal affairs on ships, saying

> "We conclude that, since the act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews . . . . to construe the act to embrace disputes involving the internal discipline and order of a foreign ship would be to impute to Congress the highly unlikely intention of departing from a well established rule of International Law that the law of the flag state ordinarily governs the internal affairs of the ship, a principle frequently recognized in treaties with other countries". (pp. 198-199)

This follows a long line of cases construing United States statutes as not applying to foreign vessels unless expressly referring to them. We can do no better than

repeat the following argument that we made in *Lauritzen* v. *Larsen*, 345 U. S. 571:

The Jones Act (Sec. 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688) which states,

> "That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; * * *"

was an amendment of Sec. 20 of the Seamen's Welfare Act of March 4, 1915 (C. 153, 38 Stat. 1164, 1185, Title 46, United States Code, § 688), known as the LaFollette Act. Sec. 20 of this 1915 Act provided as follows prior to amendment:

> "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

In this manner, the fellow-servant rule as applicable to seamen was sought to be abolished. But this Court in *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918), held that Sec. 20 of the Seamen's Welfare Act of 1915, in attempting to abolish the fellow-servant rule, had imposed no additional liability upon the shipowner beyond the liabilities already existing under the General Maritime Law. This Court, while recognizing the right of the seaman to bring his action in the State Court under the "saving to suitors' clause" held that the seaman, by the abolishment of the fellow-servant rule,

was given a right, but lacked the remedy to enforce that right.

Later, this Court, in commenting and passing on the constitutionality of the Jones Act, in *Panama Railroad Company* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 68 Law Ed. 748 (1924), in an opinion by Mr. Justice Van Devanter, wrote as follows with respect to the amendment of this Sec. 20 of the Act of 1915, at 264 U. S. 389:

> " * * * As originally enacted, § 20 was part of an act the declared purpose of which was 'to promote the welfare of American seamen.' It then provided that in suits to recover damages for personal injuries 'seamen having command shall not be held to be fellow-servants with those under their authority,' and in *Chelentis* v. *Luckenbach S. S. Co., supra,* p. 384, this Court treated it as part of the maritime law, but held it did not disclose a purpose 'to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore.' After that decision the section was reenacted in the amended form hereinbefore set forth as part of an act the expressed object of which was 'to provide for the promotion and maintenance of the American merchant marine.' "

Sec. 33 of the Merchant Marine Act of 1920, therefore, properly takes its place within the framework of the Act to which it was a partial amendment, i.e., the Seamen's Welfare Act of 1915.

The question to be determined is whether the expression "any seaman" as used in the Jones Act was intended to apply to the case of a foreign seaman injured aboard a foreign vessel in a foreign port by reason of the fact

that the articles which that seaman had signed on the foreign form were signed by him in a United States port.

The answer is to be found by reference to the wording and context of the Seamen's Welfare Act of 1915. A section by section examination of the Act discloses that certain sections thereof were made specifically applicable to foreign vessels under certain stated conditions. With respect to the balance of the sections, the provisions were couched in terms applicalble to United States vessels, but with no extension of their application to foreign vessels.

The Seamen's Welfare Act of March 4, 1915, known as the LaFollette Act, is entitled:

> "An Act To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The opening section of the 1915 Act amended Section 4516 of the Revised Statutes of the United States with respect to the requirement that a master of a vessel must sign-on, if obtainable, suitable seamen to replace those whose services have been lost by reason of desertion or casualty, and further provides that the master must report such losses to the "United States consul at the first port at which he shall arrive". This opening section is clearly restricted in its application to United States vessels by reason of the reference to United States consuls. It cannot be supposed that foreign vessels in foreign ports should report crew deficiencies to United States consuls located in those foreign ports.

Sec. 2 makes certain provisions for the division of the crew into watches, as well as for distinction between work

on deck and work in the engineroom. It also provides that no unnecessary work shall be done on Sundays or on certain specified holidays. This section, however, is limited in its application to "all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays or sounds exclusively * * *." Sec. 2 is clearly inapplicable to other than United States vessels.

Sec. 3 of the Act amended Sec. 4529 of the Revised Statutes of the United States with respect to the time for payment of wages to seamen on coasting voyages, as well as in the case of vessels making foreign voyages. In this section the terminology used is that "the master or owner of any vessel making coasting voyages shall pay to every seaman, * * *," and there is no indication that the section was to apply to foreign seamen serving aboard foreign vessels. The significance of this failure to refer to foreign vessels is pointed up when we examine the provisions of Sec. 4 and especially Sec. 11 of the Act.

Sec. 4 of the Act amended Sec. 4530 of the Revised Statutes of the United States with respect to the right of a seaman to receive on demand from the master of the vessel one-half the wages earned to that point at every port where such vessel loads or delivers cargo before the end of the voyage. The opening language of Sec. 4 states that "every seaman on a vessel of the United States shall be entitled to receive on demand * * *" and then outlines his rights. The closing portion of Sec. 4 reads as follows:

> "*And provided further*, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This Sec. 4, therefore, stands out in relation to the three sections previously considered, in that Congress considered

it necessary to include this specific provision in order to extend its terms to foreign vessels, and even then the extension was itself limited to "foreign vessels *while in harbors of the United States*". No effort was made by Congress to extend its application to foreign vessels while outside the territorial waters of this country.

The terms of this Sec. 4 were fully considered by this Court in the case of *Strathearn S.S. Co.* v. *Dillon,* 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919), wherein Mr. Justice Day, in a unanimous opinion, held that the terms of the section were applicable to a British subject serving aboard a British vessel while that vessel was in a port of the United States. The fact that certain contracts which ran counter to the purposes of the statute were voided, did not render Sec. 4 of the statute unconstitutional as destructive of contract rights. Mr. Justice Day held that this Court had fully considered the matter in *Patterson* v. *Bark Eudora,* 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), and that there was no doubt as to the authority of Congress to pass a statute of this sort specifically applicable to foreign vessels in our ports.

Sec. 5 of the Act of 1915 amended Sec. 4559 of the Revised Statutes of the United States with respect to provisions for the handling of complaints by the officers or crew of a vessel while in a foreign port when the vessel was alleged to be in an unsuitable condition to go to sea. The wording of this section is that "upon a complaint in writing signed by tht first and second officers or a majority of the crew of any vessel, while in a foreign port, * * * the consul or a commercial agent who may discharge any of the duties of a consul shall cause to be appointed" certain persons to examine into the cause of the complaint. In this section the expression "any vessel" is used, but there are no additional provisions extending the terms of the section to foreign

vessels. In fact, it would be hard to imagine that Congress could have intended to regulate the actions of foreign consuls or to have foreign seamen serving aboard foreign vessels present their complaints and problems to a United States consul in a foreign port for correction of the alleged deficiencies. Such an exercise of power by a United States consul in a foreign port with respect to a foreign vessel and foreign seamen would be totally out of line with basic theories of international jurisdiction.

Sec. 6 of the Act of 1915 amended Sec. 2 of the Act of March 3, 1897, as to the provisions for crew space and sanitary conditions aboard "all merchant vessels of the United States". This section was clearly not intended to apply to other than merchant vessels of the United States.

Sec. 7 of the Act of 1915 amended Sec. 4596 of the Revised Statutes of the United States and specified punishments for certain offenses as to "any seaman who has been lawfully engaged or any apprentice to the sea service". Here again, as to the terms "any seaman", there is no specific provision making the section applicable to foreign seamen serving aboard foreign vessels such as were found in Sec. 4, or will be found later in Sec. 11.

Sec. 8 of the Act of 1915, amended Sec. 4600 of the Revised Statutes of the United States and provided that "it shall be the duty of all consular officers to discountenance insubordination by every means in their power and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner." The expression "all consular officers" in Sec. 8 is as general as the expression "any seaman" found in Sec. 7 and later in Sec. 11, but here again it is clear that it was the intent of Congress that "all consular officers" meant only consular officers of the United States. As stated by this Court in *Sandberg*

v. *McDonald,* 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918), at 248 U. S. 195:

> "Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."

Sec. 9 of the Act of 1915, amended Sec. 4611 of the Revised Statutes of the United States with respect to flogging and corporal punishment "on board of any vessel". No specific application to foreign seamen aboard foreign vessels is to be found in this section. The significance of the failure to extend its application is pointed up by referring to those sections where such an extension was made.

Sec. 10 of the Act of 1915, amended Sec. 23 of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce", approved December 21, 1898, 30 Stat. 755, 763, with respect to the daily requirements of water and butter. Here again, no attempt was made by the language of the section to extend its application to other than United States vessels or American seamen.

In Sec. 11 of the Seamen's Act of 1915 we find a repetition of the situation existing in Sec. 4 of that same Act. The provisions are specifically extended to foreign vessels while in waters of the United States. Sec. 11 amended Sec. 24 of the Act entitled "An Act to amend the laws relating to American seamen for the protection of such seamen and to promote commerce", approved December 21, 1898. Sec. 24 of that Act of 1898 was, in turn, an amendment of Sec. 10 of Chapter 121 of the laws of 1884, 23 Stat. 53, as in turn amended by Sec. 3 of Chapter 421 of the laws of 1886, 24 Stat. 79. Sec. 11 of the Act of 1915 amended all these prior statutes as to the prohibition against paying "any seaman" wages in advance of the time

when he had actually earned the same. Sub-section (e) of this Sec. 11 of the Act of 1915 reads as follows:

> "That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Sub-section (a) of this section used the words "that it shall be and is hereby made unlawful in any case to pay any seaman wages in advance * * *." Yet, in spite of the use of the words "any seaman" Congress deemed it necessary to add sub-section (e) in order to extend the terms of this section to apply as well to foreign vessels in the waters of the United States. In other words, Congress did not believe that the use of the expression "any seaman" was in and of itself sufficient to require application to foreign vessels, even if those vessels were in the ports of the United States.

This situation finds an immediate parallel in the wording of the Jones Act which was, of course, an amendment of Sec. 20 of this same Seamen's Welfare Act of 1915. The opening language of the Jones Act reads, "That any seaman who shall suffer personal injury in the course of his employment may * * *." But there is no provision contained in Sec. 20, as amended, applying that section to foreign vessels under any circumstances whatsoever.

If Congress had intended that the Jones Act should apply to injuries sustained by foreign seamen aboard a foreign vessel while outside the territorial waters of the United States, the necessary language was at hand for

them specifically so to provide. It is significant that Congress added no such provisions.

In *Patterson* v. *Bark Eudora, supra,* this Court considered the effect of Sec. 24 of the Act of December 21, 1898, 30 Stat. 755, 763, to which Sec. 11 of the Seamen's Act of 1915 was an amendment, as described above. This Sec. 24 of the Act of December 21, 1898, similarly made it unlawful in any case to pay "any seaman" wages in advance of the time when he had actually earned same. It further stated that the provisions of the section were to be applicable as well to foreign vessels as to vessels of the United States.

The case involved primarily a question of the power of Congress to enact such a provision applicable to foreign vessels. In the words of Mr. Justice Brewer, at 190 U. S. 173:

> "But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution * * *."

The Court held that the provision making this section of the Act specifically applicable to foreign vessels was constitutional and within the domain of Congress under the commerce clause of the Constitution.

It has been contended on behalf of the plaintiff-respondent that the remedy of the Jones Act is available to foreign seamen serving aboard foreign vessels, and it is further contended that such a conclusion finds support in the decision of this Court in *Patterson* v. *Bark Eudora, supra.* As a matter of fact, the decision of this Court in *Patterson* v. *Bark Eudora* can have no parallel application to the

provisions of the Jones Act, since, as has been pointed out, *Patterson* v. *Bark Eudora, supra,* involved the constitutionality of a section specifically applicable to foreign vessels, whereas the Jones Act contains no such provison. The most that can be said for this case in connection with the applicability of the Jones Act to foreign vessels and foreign seamen is that Congress would have been within Constitutional limits *if* it had held that the Jones Act was to apply to foreign vessels and foreign seamen serving on those vessels *while in waters of the United States.* The value of the holding in *Patterson v. Bark Eudora, supra,* to the facts herein is totally vitiated by the fact that Congress made no such provision in the Jones Act, let alone as to injuries to an alien on a foreign vessel in a foreign port or on the high seas.

Later, this Court considered the interpretation of this Sec. 11 of the Act of 1915 in *Sandberg* v. *McDonald,* 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918). This Court held that the provisions of Sec. 11 did not apply to advancements made in foreign ports to alien seamen shipping abroad on foreign vessels, pursuant to contracts valid under the foreign law, in the following language at 248 U. S. 195:

> "Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regula- to be gathered from implication."

And later at page 196:

> "In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates

> the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress."

For the reasons discussed above with respect to *Patterson* v. *Bark Eudora, supra,* the *Sandberg* case is equally undeterminative of the extent of the application of the Jones Act, since the *Sandberg* case also involved the interpretation of a section of the statute specifically extended to foreign vessels. It must be noted, however, that in spite of Congress' intent to make Sec. 11 applicable to foreign vessels while in waters of the United States, this Court held that the doctrine was not to be extended beyond the territorial limits of the United States both by reason of the statute and for reasons of common sense.

How then can we justify the application of the Jones Act to an injury to an alien seaman aboard a foreign vessel while in a foreign port, when the wording of the Jones Act contains no provision making it applicable to foreign seamen serving aboard foreign vessels under any geographical conditions whatsoever?

Sec. 12 of the Act of 1915 repealed Sec. 4536 of the Revised Statutes of the United States and provided that no wages due or accruing to "any seaman" or apprentice should be subject to attachment or arrestment. Note that Sec. 12, as does Sec. 11, uses the expression "any seaman" and yet Sec. 12 contains no specific extension to foreign vessels. If a specific extension was required in Sec. 11

after the use of the expression "any seaman", then such a specific extension would equally be necessary as applied to the same expression when used in Sec. 12.

Sec. 13 of the Act of 1915 establishes certain requirements as to the number of the deck crew who are required to have a rating of not less than A.B. and requires 75% of the crew of each department to understand any order given by the officer of such vessel. The language of this section is in the form of a prohibition, reading "that no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in Sec. 1 of this Act, shall be permitted to depart from any port of the United States unless she has on board * * *." Here again, no specific extension is made as to foreign seamen or foreign vessels, and, in fact, the subsequent language in Section 13 which provides that,

> "Graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after twelve months service at sea * * *",

indicate that this section of the Act was not intended to apply to other than American vessels, since Congress certainly did not intend that all foreign seamen were to apply for licenses and certificates from the United States Department of Commerce before being qualified to ship aboard foreign vessels. This failure to provide for foreign vessels is pointed up by reference to the following section of the Act, i.e., Sec. 14, where we find a specific application to foreign vessels leaving ports of the United States.

Sec. 14 of the Act of 1915 amended Sec. 448 of the Revised Statutes by adding thereto specific regulations as to life saving appliances, the minimum number of davits and open boats, and, among other things, for a minimum

number of certified lifeboat men. This section contains the following language:

> "Provided, that foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life saving appliances, their equipment, and the manning of same."

Here again, as was found in Sec. 4 and Sec. 11 of the Act of 1915, there is a specific provision as to the extension of the section to foreign vessels under certain stated conditions. It becomes increasingly obvious, therefore, that Congress was well aware of the fact that certain of these sections were to be applied to foreign vessels, whereas certain of them were not. Where language is found making specific reference to the application of a section to foreign vessels, then it must be concluded that such was the intent of Congress, and conversely, it must be concluded that, as to those sections where such a specific extension is omitted, it was the intent of Congress that no such extension be made. If that were not the case, then such wording would be mere surplusage and of no effect whatsoever.

Section 15 of the Act of 1915 provides that: "the owner, agent, or master of every barge which, while in tow through the open sea has sustained or caused any accident, shall be subject, in all respects to the provisions of Sections ten, eleven, twelve and thirteen of chapter three hundred and forty-four of the Statutes at Large, approved June twentieth, eighteen hundred and seventy-four," and further provides that the reports prescribed in those sections shall be transmitted by collectors of customs to the Secretary of Commerce, who shall, in turn, transmit them in summary form to Congress annually. Here again, no specific provision is made applying the terms of this section to foreign vessels, and we should bear in mind that if such had been the inten-

tion of Congress, then the language was readily available, for, as has been noted above, such language had already been used three times in the same Act.

Sec. 16 of the Act of 1915 "requested and directed" the President to give notice to the several governments that all treaties and conventions between the United States and such governments with respect to the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign ports and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States be terminated upon the expiration of certain specified periods. This request was also directed to "any other treaty provision in conflict with the provisions of this Act."

The Congressional Record bears witness to the prolonged discussion and debate which the provisions of this particular section evoked. On the one hand, Senator LaFollette of Wisconsin was urging upon Congress the desirability of the termination of such treaties, whereas Senator Burton of Ohio was the leader of the faction which urged a more moderate course. In the end, Senator LaFollette had his way, for Sec. 16 as finally enacted did call for the termination of such treaties. (Congressional Record, 63rd Congress, 1st Session, Vol. 50, Part 6, pages 5761-5792.)

It is interesting to note that in spite of the urging of Senator LaFollette, from whom the Act of 1915 derives its name, the provisions of that Act were not made uniformly applicable to foreign vessels, but only certain sections thereof, and then only under certain specified conditions and situations.

Evidence of the reluctance in certain quarters of Congress to make even these specified sections applicable to foreign vessels is to be found in the Report of the House

Committee on Merchant Marine and Fisheries. In commenting and passing on the proposed Sec. 4 of the Act dealing with half wages the Report states (House Report No. 851, 63rd Congress, 2nd Session, page 18):

> "The application of this section, however, to foreign vessels raises a serious question."

And later at page 20 of the same Report:

> "It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.
>
> Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships and question its value to our merchant marine."

Sec. 17 of the Act of 1915 provided for the repeal of the various treaties designated in Sec. 16 upon the termination of the periods of notice required.

Sec. 18 of the Act of 1915 provided as to the time the Act was to take effect.

Sec. 19 of the Act of 1915 amended Sec. 16 of the Act of December 21, 1898, entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," by adding thereto a provision that if "any seaman" incapacitated from service by injury or illness was on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel "before an American consul or consular agent was impracticable," then such seaman himself was to be sent to a consul or consular agent who was in turn directed to care for him and defray the cost of his maintenance and transportation. Here again, although the section of the Act uses the expression "any seaman", it is obvious that it refers to seamen aboard American vessels,

for it refers specifically to the requirement of a personal appearance of the master of the vessel before an "American consul or consular agent".

The next and last section, Sec. 20 of the Act of 1915, was the section which sought to abolish the fellow-servant doctrine as applied to seamen, and which was superseded and amended by the passage of the Jones Act in 1920.

If we consider the Jones Act within the framework of the Merchant Marine Act of June 5, 1920, of which it was Sec. 33, we are forced to the same conclusion that the expression "any seaman" was not intended to cover foreign seamen serving on foreign vessels who were injured in foreign ports.

The Merchant Marine Act of June 5, 1920, as has been pointed out above, was "An Act To provide for the promotion and maintenance of the American Merchant Marine * * *" and as such its provisions and sections covered the following subjects: the repeal of prior legislation with respect to appropriation for the Military and Naval establishments; the repeal of prior legislation with respect to charter and freight rates and to the requisitioning of vessels by the Government; the establishment of the United States Shipping Board; authorization for the sale or charter of Government-owned vessels to citizens of the United States; further authorization with respect to the sale of other property by the United States Shipping Board; provisions for the investigatory powers of the United States Shipping Board with respect to the operation of vessels by citizens of the United States; provisions for the carrying of all mails of the United States on American-built vessels documented under the laws of the United States if practicable; provisions for a limitation of the number of passengers to be carried aboard cargo vessels documented under the laws and flag of the United States; provisions stating that no

merchandise shall be transported between points in the United States on other than vessels built in and documented under the laws of the United States and owned by persons who are citizens of the United States; all the provisions of the Ship Mortgage Act of 1920; a further amendment of the prohibition against the payment of advance wages, earlier mentioned, not amending, however, the specific provisions as to the applicability to foreign vessels within the harbors of the United States; and finally, the establishment of certain definitions as to the ownership of vessels by citizens of the United States.

In short, there is nothing in the Merchant Marine Act of June 5, 1920, calling for any application whatsoever to foreign seamen serving aboard foreign vessels in foreign ports, since the whole Act is concerned with the machinery necessary for the establishment and operation of the United States Shipping Board and the operation, supervision, sale and purchase of vessels of the United States.

The report of the Senate Committee on Commerce made the following statement with respect to the aims of the Merchant Marine Act of 1920 (Senate Report No. 573, 66th Congress, 2nd Session, p. 2):

> "No interests but American interests have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it."

If we look to the wording of the Jones Act, totally aside from its context within the framework of the Acts of 1915 or 1920, further evidence is found that Congress did not intend to include within its provisions foreign seamen serving aboard foreign vessels injured in foreign ports. The closing sentence of Sec. 33 of the Merchant Marine Act of 1920 reads as follows:

"* * * Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The use of the word "jurisdiction" has been interpreted by this Court not to relate to the general jurisdiction of the court, but to venue only. *Panama Railroad Company* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924). Even granting such an interpretation of the word "jurisdiction", however, this closing sentence of Sec. 33 makes it abundantly clear that Congress had in mind domestic employers and shipowners rather than foreign shipowners when it adopted this particular phraseology.

What foreign shipowner would be likely to reside in or have his principal office in the United States? How would a foreign seaman proceed under the language of the Jones Act if his employer, the foreign shipowner, did not live in the United States and did not have any office located in the United States?

If Congress had intended to give a remedy to the foreign seaman serving aboard a foreign vessel under the Jones Act, it could very easily have so provided by giving him an *in rem* remedy. With such a remedy available, the foreign seaman could have proceeded against the vessel upon her arrival in any United States port. It is significant that Congress did not make any such provision. A lien against the vessel is essential to every proceeding *in rem,* and no such lien arises by reason of the Jones Act in favor of an injured seaman. This Court specifically so held in *Plamals* v. *s/s Pinar Del Rio,* 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928).

There may be isolated instances in which the defendant employer of the foreign seaman, while having his principal office located in the foreign country, may at the same time

have an office in this country so as to allow the injured foreign seaman to start an action under the Jones Act in the court of the district in which such local office is located. But if we are to impute to Congress the intent to provide for foreign seamen serving aboard foreign ships under the terms of the Jones Act in spite of its language, then we must equally be prepared to admit that by the section as presently written, Congress has given only a partial remedy, since the majority of foreign seamen would find it impossible to comply with the jurisdiction and venue requirements as presently constituted.

It has been argued by plaintiff-respondent, both in the Court of Appeals and in the brief submitted in opposition to the petition for a writ of certiorari in this Court, that the Jones Act should be applied to foreign seamen serving on foreign ships who sign on in the United States and are subsequently injured outside the territorial waters of the United States in order to close the gap alleged to exist between the operating costs of foreign and American shipowners. This argument is apparently based on a belief that such a construction would indirectly subsidize the American Merchant Marine, and that as a result the burden falling upon the United States taxpayer would be lightened.

Plaintiff-respondent ignores our national policy against indirect subsidies to shipping as shown by the Merchant Marine Act of June 29, 1936 (C. 858, 49 Stat. 1985, 46 U. S. C. § 1101), and the Congressional Reports.

Prior the the passage of the Merchant Marine Act of 1936, Congress had provided aid to American shipping in the form of lending money at low rates of interest to the American shipping companies for the purpose of building new ships for foreign trade. Congress had, in addition, appropriated large annual sums under the guise of payments for ocean-mail contracts. Plaintiff-respondent now

seeks to have the court construe the Jones Act as applying to foreign seamen in order to give American shipowners an additional subsidy. However, President Roosevelt, in his Message to Congress on the Merchant Marine Act of 1936, dated March 4, 1935, in speaking of the difference between the ocean-mail payments actually made and the reasonable cost of such service, stated (74th Congress, House Document No. 118, p. 2):

> "The difference, $27,000,000, is a subsidy, and nothing but a subsidy. But given under this disguised form it is an unsatisfactory and not an honest way of providing the aid that Government ought to give to shipping.
>
> *I propose that we end this subterfuge.* If the Congress decides that it will maintain a reasonably adequate American Merchant Marine I believe that it can well afford honestly to call a subsidy by its right name." (Emphasis supplied.)

More recent evidence of the policy of our government to avoid the indirect subsidy is found in President Truman's request made in August, 1952, to the Secretaries of Commerce and the Treasury to prepare reports on the existing law offering tax deferments on shipping earnings as an added inducement to the setting aside of funds for new construction. President Truman asked for a plan to abrogate these tax benefits and establish some other financial assistance in the form of a direct subsidy.

It is submitted, that for the courts of the United States to attempt to reduce the burden of the United States taxpayer by subjecting foreign shipowners to higher insurance rates for personal injury coverage would be to resort to that very form of "subterfuge" which the Merchant Marine Act of 1936 was explicitly designed to avoid. The decisions of our courts have no place within this province.

According to present policy, foreign as well as United States vessels are subject to regulation by multilateral Conventions or treaties, rather than by unilateral legislation. The most recent example was the International Convention for Safety of Life at Sea, 1948, held in London. This Convention was signed in London on June 10, 1948, by the respective plenipotentiaries of the government of the United States and the governments of 27 other countries. The provisions of the Convention were submitted to the Senate on January 13, 1949, and were ratified without amendment or exception on April 20, 1949 (Congressional Record, 81st Congress, 1st Session, Vol. 95, Part 4, pages 4822-4825). Subsequently, on November 19, 1951, the fifteenth country deposited its ratification (Denmark was one of the fifteen) and the Convention thereby came into force on November 19, 1952. President Truman, by proclamation dated September 10, 1952, proclaimed that the Convention was to be observed and fulfilled with good faith by the United States on and after November 19, 1952.

This Convention provides, in brief, for all vessels to obtain from their own countries certificates of compliance with the requirements of the Convention with respect to: life saving equipment, watertight bulkheads, double bottoms, load lines, stability tests, log entries, safety of electrical installations, fire protection and patrols, radio installations and the carriage of dangerous cargoes. Also promulgated were uniform regulations for preventing collisions at sea. The full text of the Convention is now officially reported in 65 United States Statutes at Large, 406. This has been followed by the 1960 Safety of Life at Sea Convention, 16 UST 185.

According to plaintiff-respondent's principles of statutory construction, the same result should have been reached by extending American inspection statutes to cover all

ships trading to the United States. That Congress and the President acted through the Convention is proof positive of our present policy to steer clear of applying United States statute law to foreign vessels, but to accomplish the same aims through multilateral action calling for consent by all concerned.

Counsel for plaintiff-respondent has stressed the alleged inequality existing between American and foreign seamen, and urges that the Jones Act should be applied since it is more liberal to the seamen.

Those are not valid arguments for applying the Jones Act to the factual situation herein. The real question is whether the Jones Act was by its terms intended to be applicable to a foreign seaman, who is injured in a foreign port after signing-on a foreign vessel in a United States port, when that seaman recovered the benefits to which he was entitled under the law of the flag.

Having examined the wording of the Jones Act, both within the framework of the Act of 1915, to which it was an amendment and within the framework of the Merchant Marine Act of 1920, in which it was enacted, we return to the question: Does "any seaman" as used in the Jones Act, mean foreign seamen serving aboard foreign vessels who are injured in foreign ports aboard those vessels?

Certainly the provisions of the Acts would not so indicate, for when Congress intended any particular section to apply to other than United States vessels, a specific provision was invariably included, and as a result, no guesswork is required to determine what sections of the Acts are limited to United States vessels and what sections of the Acts are to be further extended so as to apply as well to foreign vessels under specified conditions.

Sec. 11 of the Act of 1915 which prohibited the payment of advance wages also used the expression "any seaman"

in defining its applicability, but Congress did not feel that that alone was sufficient to extend to other than United States vessels, because sub-section (e) of that Sec. 11 called for specific application "to foreign vessels while in waters of the United States." If Congress had intended the Jones Act to apply as well to foreign vessels, then why was such a specific extension not included within its terms?

As stated by this Court in *Sandberg* v. *MacDonald,* at 248 U. S. 195, with respect to application of Sec. 11 to foreign vessels while in other than United States ports:

> "Had congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

To ignore the above, and to construe the Jones Act as a penal statute in favor of American shipowners so as to penalize a country such as Greece which is making a bona fide effort to establish a strong merchant marine is entirely contrary to this Court's decisions and traditions.

CONCLUSION

REARGUMENT SHOULD BE GRANTED AND THE DECISION BELOW REVERSED.

Respectfully Submitted,

JAMES M. ESTABROOK,
Counsel for the Royal Greek Government as Amicus Curiae

DAVID P. H. WATSON,
Of Counsel

CERTIFICATE OF COUNSEL

Pursuant to Rule 58 I certify that the petition herein is presented in good faith and not for delay.

.....

James M. Estabrook

Dated: New York, N. Y., July , 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED

and

UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMICI CURIAE BRIEF IN SUPPORT OF THE PETITION FOR REHEARING

JOHN R. SHENEMAN
Attorney for Amici Curiae
Greek Chamber of Shipping

and

THE UNION OF GREEK SHIPOWNERS
19 Rector Street
New York, New York 10006

EDWIN K. REID
GEORGE D. BYRNES
Of Counsel

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AMICI CURIAE BRIEF IN SUPPORT OF THE PETITION FOR REHEARING

STATEMENT OF INTEREST OF AMICI CURIAE

This brief as *amici curiae* is respectfully submitted in support of Petitioners' petition for a rehearing of the decision of this Court No. 661 dated June 8, 1970 by The Union of Greek Shipowners and the Chamber of Shipping of Greece.

The Petitioners' and Respondent consented to the filing of a brief in support of Petitioners' brief for a writ of certiorari and Petitioners' brief on the merits.

The statement of interest of *amici curiae* is fully set forth in amici curiaes' brief filed in support of Petitioners'

brief on the merits. Briefly amici curiae have a vital interest that Greek law and the jurisdiction of the Greek Courts, preserved in the Collective Agreement and in accordance with the Greek social welfare programs, should exclusively govern personal injury disputes and all other disputes affecting the internal economy and discipline of Greek owned Greek flag vessels.

ARGUMENT

The majority decision of this court holding that the Jones Act, 46 USC. 688 applied to Hellenic Lines, Ltd. turned on the facts that Pericles, the owner of more than 95% of the stock of Hellenic Lines, Ltd., a Greek corporation, was a lawful permanent resident alien whose base of operation was New York and that the Greek flag, Hellenic Hero, in a regular scheduled run between the U. S. and foreign ports, and many of the sister ships earned income from cargo originating or terminating here. The majority virtually ignored the flag, the contract of employment, the nationality of the seamen, all of which were Greek, and that the seaman might be compensated in Greece.

The test adopted by the majority was:

> "If, as stated in *Bartholomew* v. *Universe Tankships, Inc.*, 263 F. 2d 437, the liberal purposes of the Jones Act are to be effectuated, the facade of the operation must be considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this ship and this owner have with the United States."

In applying the test to the facts this Court stated:

> "We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner,

> engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act "employer". The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contracts which this alien owner has with this country."

The dissenting decision, disagreeing with the majority, stated:

> "This result is supported neither by precedent, not realistic policy, and in my opinion is far removed from any intention that can reasonably be ascribed to Congress."

The majority decision test of substantial contacts with the United States is contrary to the test set forth in *Lauritzen* v. *Larsen,* (1953) 345 U. S. 571, 582:

> "Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valueing points of contact between the transaction and the states or governments whose competing laws are involved".

No where did the majority seriously attempt to resolve the conflicts between the Jones Act and Greek law. Nor did the majority adequately value the points of contact between the Respondents business, the transaction and the Greek government.

The cornerstone of *Lauritzen* that the Jones Act was to be construed under prevalent doctrines of international law, absent some "clear expression" from Congress to the contrary, was overturned. 345 U. S. at 577. *Romero* v.

International Terminal Co., 358 U. S. 354 (1959) at 383. *McCulloch* v. *Sociedad National*, 372 U. S. 10 (1963) ILA *1416* v. *Ariadne Shipping Co.*, 1970 AMC 259. The majority reduced the most venerable and universal rule of maritime law, which gives cardinal importance to the law of the flag, to a minor weight.

The dissent correctly points out that the Jones Act is concerned with prescribing particular remedies, rather than regulating commerce or creating a standard for conduct. It is of a remedial type pertaining to an injured seaman, American or resident alien, whose well being is the concern of the United States. The employer, Petitioner, does not fall to be dealt with under legislative jurisdiction. The dissent stated that no matter how qualitatively substantial or numerous "contacts" may be they have no bearing on Jones Act recovery. Questions involving transactions occurring aboard foreign flag vessels should be answered by Respondent's relationship to this country.

The majority decision premised that an American based foreign shipowning employer, not subject to the Jones Act, has a competitive economic advantage over United States citizens engaged in the same business. The premise is based upon an assumption. There is no proof before the court to support the premise. The dissent points that out and assumes that even if Jones Act liability is a significant uncompensated cost in the operation of an American ship, that is not a sufficient reason to afford a recovery to a foreign seaman when the underlying concern of the legislation is the adjustment of the risk of loss between individuals and not the regulation of commerce or competition.

Congress has given economic protection benefits to American shipowners to offset higher operational costs in which alien shipowners, indeed, Hellenic Lines, cannot participate. See, e.g. 46 USC 883 (coastwise trade); 46 U.S.C. 1180 (subsidy). See generally S. Lawrence United States Merchant Shipping Policies & Politics 61-67 (1966).

While Pericles has the same constitutional protection of due process that we accord citizens, he is not entitled to the benefits of all laws of the United States. He cannot qualify for a subsidy, operate vessels in coastwise trade and participate in the carriage of certain cargoes. Nor can he hold public office or vote. He may be sued in any United States judicial district. All of these factors show his ties with foreign sovereign and his second class constitutional status. On the other hand the laws of Greece prohibit him from crewing Greek flag vessels with Americans so as to afford employment to American seamen and higher wages.

The majority, as emphasized by the minority, has taken the phenomenon of "convenient" foreign registry as a wedge for displacing the law of the flag and with a broad stroke brushed aside principles of comity designed to "foster amicable and workable relations". 345 U. S. at 582.

Respondent, a Greek national who resides in Greece, has no American ties. His well-being is of no concern to this country. The Greek law provides the appropriate rule in the Greek social welfare programs. The application of the law of the flag to this case would be in accordance with the principles of international law and comity.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

JOHN R. SHENEMAN
Attorney for Respondents
19 Rector Street
New York, New York 10006

EDWIN K. REID
GEORGE D. BYRNES
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that the above brief in support of the petition for rehearing is presented in good faith and not for delay.

It is also certified that on the day of June, 1970 copies of the said brief have been forwarded to:

George F. Wood of Pillans, Reams, Tappan, Wood & Roberts, Attorney for Petitioners, Hellenic Lines, Limited and Universal Cargo Carriers, Inc. at his office and post office address, 510 Van Antwerp Building, P. O. Box 2245, Mobile, Alabama 36601.

Joseph B. Stahl, Attorney for Respondent, Zacharias Rhoditis at his office and post office address, Baronnee Building, New Orleans, Louisiana 70112.

Mr. Wood's and Mr. Stahl's consent was obtained to file the brief Amici Curiae in support of the Petition.

JOHN R. SHENEMAN